IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

RSA.No. 943 of 2006()

AS.210/2005 of ADDL. DISTRICT COURT, PARAVUR
OS.591/1999 of MUNSIFF COURT, PARAVUR
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PETITIONER/APPELLANT/FIRST DEFENDANT

NATIONAL INSURANCE COMPANY LTD.,
KOCHI, MATTANCHERRY, SHALIMAR CHAMBERS,
P.T.JACOB ROAD, THOPPUMPADY, KOCHI-682 005,
REP. BY BRANCH MANAGER.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS: PLAINTIFFS & SECOND DEFENDANT
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1. AYYAPPANKUTTY, S/O.RAMANKUTTY,
KANAKKANTEPALLATH, CHALAKKA WARD,
KUNNUKARA PANCHAYATH, KUNNUKARA VILLAGE,
PARAVUR TALUK, POST N.KUTHIYATHODE.

2. KUNNUKARA KUC SOCIETY LTD. NO. E.32,
KUNNUKARA POST, 683 524, REP. BY ITS SECRETARY.

R1 BY ADV. SRI.M.P.RAMNATH

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

R.S.A.No.943 OF 2006

Dated this the 10th day of January, 2007

JUDGMENT

1. The short issue that arises for decision in this second appeal is as to whether the lower appellate court was right in rejecting the application to condone delay in filing the appeal for default on the face of the submission that no steps were taken and the endorsements on the face of the application to condone delay before the lower appellate court was erroneous.

2. The substantial question of law that arises in this second appeal is as to whether the courts below acted in terms of Section 5 of the Limitation Act in dismissing the application to condone delay.

3. First respondent appeared through counsel. Heard counsel for parties.

4. It is seen that the application to condone delay filed along with

the first appeal before the lower appellate court was dismissed on 6.6.2006 by taking the view that though steps were taken on 22.3.2006, steps were submitted to have been taken only on the day previous to the date on which the said order was passed. It is pointed out that the application for condonation of delay was pending along with the appeal. In my considered view, even if steps were taken only on the previous day, the lower appellate court ought to have considered the application for condonation of delay since sufficient cause to condone delay is a matter to be considered while deciding as to whether the appeal is to be entertained by condoning the delay. Under such circumstances, I am satisfied that the dismissal of the first appeal of the first defendant, a public sector insurance company, results in manifests miscarriage of justice, the said party deals with public funds.

5. In the result, the impugned order dated 6.6.2006 on I.A.833/05 and the consequent dismissal of A.S.210/05 by the Additional District Court, Paravur are set aside. I.A.833/05 will,

accordingly, stands restored for consideration on its merits by the lower appellate court.

6. This appeal is allowed as above on condition that the appellant pays the first respondent an amount of Rs.1,500/- as cost through the counsel appearing before this Court within a period of three weeks from today. On the cost being paid, the parties shall appear before the lower appellate court on 6.2.2007.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.